

FILED

FEB 19 2020

Clerk, U.S. Courts
District Of Montana
Missoula Division

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

BOBBY FRANCIS LOWRY,

Plaintiff,

vs.

REGINALD D. MICHAEL;
UNKNOWN OWNERS OF
MONTANA-BASED PRE-RELEASE
CENTERS,

Defendants.

CV 19-30-M-DLC-KLD

ORDER

United States Magistrate Judge John T. Johnston entered his Order and Findings and Recommendation on January 30, 2019, recommending that the Court deny the motion to dismiss of Defendant Reginald D. Michael. (Doc. 16.) Michael failed to timely object to the Findings and Recommendation, and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews for clear error those findings and recommendations to which no party objects. *See Thomas v. Arn*, 474 U.S. 140, 149–53 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been made.” *Wash. Mut., Inc. v. United States*, 856 F.3d 711, 721 (9th Cir. 2017)

(citation omitted).

Judge Johnston found that Michael is not entitled to dismissal of Plaintiff Bobby Francis Lowry's claims brought under the Americans with Disabilities Act, 42 U.S.C. § 12101. The Americans with Disabilities Act applies in prisons, *Penn. Dep't of Corrs. v. Yeskey*, 524 U.S. 206, 209 (1998), and it provides protections for disabled inmates seeking relief from, for example, a state parole board, *Thompson v. Davis*, 295 F.3d 890, 898 (9th Cir. 2003) (per curium). Given the liberal standard afforded to pro se litigants, especially those who are incarcerated, the undersigned agrees with Judge Johnston that dismissal is premature. Lowry may be able to plausibly allege that he was denied placement in a prerelease center because of his deafness.

Accordingly, IT IS ORDERED:

(1) Judge Johnston's Findings and Recommendation (Doc. 16) is
ADOPTED in full; and

(2) Defendant Reginald D. Michael's Motion to Dismiss (Doc. 10) is
DENIED.

DATED this 19th day of February, 2019.



Dana L. Christensen, Chief Judge
United States District Court